

Message Text

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PA-03 PRS-01 USIA-15 RSR-01 /131 W

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UNCLAS SECTION 1 OF 2 IAEA VIENNA 6538

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TAGS: IAEA, TECH

SUBJ: IAEA INTERLABORATORY SAFEGUARDS EXPERIMENT

SUMMARY. AGENCY PREPARED INITIATE FIRST PLUTONIUM FIELD EXPERIMENT FOR SAFEGUARDS. NBS PU SAMPLES TO BE DISTRIBUTED TO LABORATORIES IN SEVERAL COUNTRIES. AGENCY REQUESTS U.S. VIEWS ON APPROPRIATE MECHANISM FOR TRANSFER U.S.-ORIGIN SNM TO COUNTRIES CONCERNED, IN LIGHT ITS OBLIGATIONS UNDER U.S./IAEA AGREEMENT FOR COOPERATION. MISSION BELIEVES USE OF SAFEGUARDS SUSPENSION PROVISION OF AGENCY'S SAFEGUARDS DOCUMENT (PARA 24 OF INFCIRC/66/REV.2) PROVIDES ONE SOLUTION TO PROBLEM, WHICH MERITS SERIOUS CONSIDERATION. ACTION REQUESTED: U.S. VIEWS SOONEST. END SUMMARY.

1. AGENCY IS PREPARED TO INITIATE FIRST PLUTONIUM ANALYSIS FIELD EXPERIMENT FOR SAFEGUARDS (PAFEX-1), WHICH INVOLVES DISTRIBUTION BY IAEA OF NBS STANDARDS CONTAINING SMALL QUANTITIES OF PLUTONIUM OBTAINED FROM U.S. TO FOLLOWING LABS: BHABHA ATOMIC RESEARCH CENTER, BOMBAY, INDIA; CENTRE D'ETUDES NUCLEAIRES DE FONTENAY-AUX-ROSES, FRANCE; NUCLEAR RESEARCH INSTITUTE AT REZ, CSSR; AND KHLOPIN RADIUM INSTITUTE, USSR (0.75 GRAMS PU EACH), AND ALSO TO BUNDESANSTALT FUR MATERIALPRUEFUNG, FRG, AND JAPAN NUCLEAR MATERIAL CONTROL CENTER (0.25 GRAMS PU EACH), IN CONNECTION WITH AGENCY'S PROGRAM FOR TESTING AND DEVELOPMENT OF PROCEDURES AND SPECIFICATIONS FOR SAFEGUARDS ANALYTICAL WORK REQUIRED FOR EFFECTIVE

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FICATIONS FOR SAFEGUARDS ANALYTICAL WORK REQUIRED FOR EFFECTIVE

IMPLEMENTATION OF SAFEGUARDS UNDER NPT. (EUROCHEMIC ALSO PLANS TO SUPPLY SAMPLES (4.2 GRAMS PU EACH) FOR AGENCY'S DISTRIBUTION TO ALL OF THE FOREGOING LABS, PLUS AERE (HARWELL) IN U.K.; NBL IN U.S., AND AGENCY'S SEIBERSDORF LAB.)

2. AGENCY HAS SOUGHT MISSION'S ADVICE RE MECHANISM AND LEGAL REQUIREMENTS THAT MIGHT BE NECESSARY TO PERMIT TRANSFER OF SAMPLES TO LABS CONCERNED FOR THIS EXPERIMENT, SINCE U.S.- ORIGIN NUCLEAR MATERIAL IS INVOLVED. FURTHER, AGENCY POINTS OUT THAT SEVERAL OTHER SIMILAR EXPERIMENTS INVOLVING SMALL QUANTITIES OF SNM ARE PLANNED IN FUTURE, AND THAT EVENTUALLY A NETWORK OF LABS FOR SAFEGUARDS ANALYTICAL WORK WILL BE ESTABLISHED, SO THAT IT IS NECESSARY TO WORK OUT APPROPRIATE LONG-TERM SOLUTION TO PROBLEM.

3. MISSION HAS EXAMINED MATTER IN LIGHT AGENCY'S STATUTE, U.S./IAEA AGREEMENT FOR COOPERATION, U.S./IAEA MASTER CONTRACT FOR SALES OF RESEARCH QUANTITIES OF SPECIAL NUCLEAR MATERIALS, AGENCY'S SAFEGUARDS SYSTEM (INFCIRC/66/REV.2), AGENCY'S NPT SAFEGUARDS SYSTEM (INFCIRC/153), AND NBS PURCHASE ORDER FORM (NBS-285A), ALL OF WHICH ARE RELEVANT. CASE IS COMPLICATED, SINCE SOME PROVISIONS OF FOREGOING DOCUMENTS APPEAR TO BE IN CONFLICT WITH PROVISIONS IN OTHERS (E.G., NBS-285A STATES THAT "...SAFEGUARDS AGAINST USE FOR MILITARY PURPOSES...SHALL ALWAYS APPLY TO THE MATERIAL TRANSFERRED HEREBY"--PARA 1 OF TERMS AND CONDITIONS--WHILE INFCIRC/66/REV.2 AND INFCIRC/153 ALLOW FOR EXEMPTION FROM SAFEGUARDS FOR QUANTITIES BELOW CERTAIN LIMITS), OR DO NOT RPT NOT APPEAR TO COVER SITUATION WHERE AGENCY ITSELF HAS CUSTODY AND CONTROL OF MATERIAL (E.G., INFCIRC/66/REV.2 APPEARS TO BE WRITTEN PRIMARILY IN TERMS OF IMPLEMENTING SAFEGUARDS IN A STATE).

4. KEY PROVISION GOVERNING CASE, OF COURSE, IS THAT CONTAINED IN ARTICLE V OF U.S./IAEA AGREEMENT FOR COOPERATION, WHEREBY AGENCY GUARANTEES, INTER ALIA, THAT "MATERIAL...TRANSFERRED OR RE-TRANSFERRED PURSUANT TO THIS AGREEMENT SHALL BE USED OR TRANSFERRED ONLY IN ACCORDANCE WITH THE AGENCY STATUTE AND THIS AGREEMENT." AGENCY ALSO GUARANTEES IN ARTICLE V THAT "SAFEGUARDS SET FORTH IN THE AGENCY STATUTE SHALL BE MAINTAINED AND IMPLEMENTED AS PROVIDED IN THE AGENCY STATUTE...", AND THAT "NO MATERIAL...TRANSFERRED PURSUANT TO THIS AGREEMENT WILL BE USED FOR...ANY...MILITARY PURPOSES." ACCORDINGLY, AGENCY MUST ALSO COMPLY WITH THESE LATTER UNCLASSIFIED

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TWO PROVISIONS IN CONNECTION WITH A FURTHER TRANSFER OF NUCLEAR MATERIALS RECEIVED FROM THE U.S. UNDER THE U.S./IAEA BILATERAL.

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5. AGENCY'S STATUTE DOES NOT RPT NOT DEFINE AGENCY SAFEGUARDS IN DETAIL, ALTHOUGH THE PURPOSE OF SAFEGUARDS IS CLEAR, I.E., "...TO ENSURE THAT SPECIAL FISSIONABLE AND OTHER MATERIALS...MADE AVAILABLE BY THE AGENCY...ARE NOT USED IN SUCH A WAY AS TO FURTHER ANY MILITARY PURPOSE...." (ARTICLE III.A.5). THIS RAISES QUESTION AS TO PRECISE MEANING OF "THE SAFEGUARDS SET FORTH IN THE AGENCY STATUTE SHALL BE MAINTAINED AND IMPLEMENTED...." (ARTICLE V(A) OF U.S./IAEA BILATERAL). ON OTHER HAND, ARTICLE II.C OF U.S./IAEA BILATERAL STATES THAT "THE SPECIAL NUCLEAR MATERIAL MADE AVAILABLE TO THE AGENCY PURSUANT TO THE AGENCY STATUTE WILL BE USED OR PURSUANT TO THE AGENCY'S DIRECTION AND ITS BEHALF DISTRIBUTED BY THE AGENCY IN ACCORDANCE WITH THE STATUTE OF THE AGENCY AND RULES AND REGULATIONS MADE PURSUANT THERETO...." RULES AND REGULATIONS CERTAINLY WOULD INCLUDE, FOR EXAMPLE, INFCIRC/66/REF.2. ACCORDINGLY, BELIEVE PROVISIONS OF ARTICLE V OF THE U.S./IAEA BILATERAL, WHEN READ IN CONJUNCTION WITH FOREGOING PROVISIIN, LEAD TO CONCLUSION THAT RELEVANT PROVISIONS OF INFCIRC/66/REV.2, ARE APPLICABLE TO THIS CASE, EVEN THOUGH IT IS NOT RPT NOT SPECIFIED THAT INFCIRC/66/REV.2 WAS INTENDED ALSO TO APPLY TO MATERIALS UNDER CUSTODY AND CONTROL OF IAEA ITSELF. BELIEVE ARTICLES III.B.2 AND XII.B OF AGENCY'S STATUTE SUPPORT THIS CONCLUSION.

6. ON ASSUMPTION THAT FOREGOING CONCLUSION IS CORRECT, MISSION BELIEVES ONE SOLUTION TO PROBLEM WOULD BE FOR AGENCY TO UTILIZE PROVISION FOR SUSPENSION OF SAFEGUARDS SET FORTH IN PARA 24 OF UNCLASSIFIED

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INFCIRC/66/REV.2, WHICH PERMITS SUSPENSION OF SAFEGUARDS "WHILE THE MATERIAL IS TRANSFERRED, UNDER AN ARRANGEMENT...APPROVED BY THE AGENCY, FOR THE PURPOSE OF...TESTING, RESEARCH OF DEVELOPMENT...TO ANY OTHER MEMBER STATE..., PROVIDED THE QUANTITIES OF NUCLEAR MATERIAL WITH RESPECT TO WHICH SAFEGUARDS ARE SUSPENDED IN A STATE MAY NOT AT ANY TIME EXCEED..." ETC. (SAMPLES IN QUESTION ARE FAR BELOW ESTABLISHED SUSPENSION LIMITS.) AT SAME TIME, BELIEVE IT WOULD ALSO BE NECESSARY, AS PART OF ARRANGEMENT, FOR AGENCY TO OBTAIN ASSURANCE FROM GOVERNMENTS OF COUNTRIES WHERE RECIPIENT LABS ARE LOCATED THAT PEACEFUL USES GUARANTEE WILL BE OBSERVED WITH RESPECT TO USE OF SAMPLES, IN ORDER FOR AGENCY TO BE IN COMPLIANCE WITH ARTICLE V(B) OF BILATERAL. BELIEVE THIS COULD BE ACCOMPLISHED IN AN EXCHANGE OF LETTERS BETWEEN THE AGENCY AND THE STATES CONCERNED.

7. MISSION HAS DISCUSSED FOREGOING APPROACH INFORMALLY WITH AGENCY LEGAL STAFF (RAMES) WHO HAS AGREED STUDY MATTER AND DISCUSS IN-HOUSE. MISSION BELIEVES THIS APPROACH DESERVES SERIOUS CONSIDERATION, SINCE IT WOULD ALSO PROVIDE BASIS FOR LONG-TERM SOLUTION TO PROBLEM. IN ANY EVENT, URGENT ACTION IS REQUIRED, SINCE SAMPLES ARE PREPARED AND READY FOR SHIPMENT, AND LABORATORIES CONCERNED ARE ALSO EADY AND WAITING TO PROCEED. ONLY THING HOLDING UP EXPERIMENT, THEREFORE, IS NEED TO REACH UNDERSTANDING ON MECHANISM TO BE USED TO SATISFY AGENCY'S LEGAL OBLIGATIONS AND REQUIREMENTS, PARTICULARLY THOSE DERIVING FROM U.S./IAEA BILATERAL IN CONNECTION WITH U.S.-ORIGIN MATERIAL.

8. MISSION WOULD APPRECIATE U.S. VIEWS ON FOREGOING APPROACH SOONEST, AND IF POSSIBLE BY END THIS WEEK.LABOWITZ

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